

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTINE R. MCCONNELL,

Plaintiff-Appellant,

v

WILLIAM BEAUMONT HOSPITAL, DR.
LAWRENCE B. PRUSSACK, DR. STEPHANIE
K. STEIN, DR. LANA D. POWELL, DR. DIEGO
A. HERNANDEZ and DR. PATRICIA HANN,

Defendants-Appellees.

UNPUBLISHED
December 2, 2003

No. 241672
Oakland Circuit Court
LC No. 01-034367-NH

Before: Cooper, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from a circuit court order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Prussack performed a laparoscopic tubal ligation upon plaintiff at the defendant hospital on July 1, 1999. She filed this medical malpractice action on August 30, 2001. Although Prussack is board-certified in the specialty of obstetrics and gynecology, plaintiff filed an affidavit of merit from Dr. Jeffrey Sherwood, who is only board-certified in general surgery. The trial court ruled that the affidavit of merit was nonconforming and dismissed the complaint. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

A plaintiff filing a medical malpractice action is required to file "an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169." MCL 600.2912d(1). Section 2169 requires that if the defendant doctor is a specialist, the expert witness must specialize in the same specialty. If the defendant doctor is a board-certified specialist, the expert witness must also be board certified in that specialty. MCL 600.2169(1)(a); *Sobran v McKendrick*, dec'd sub nom *McDougall v Schanz*, 461 Mich 15, 22-23, 37; 597 NW2d 148 (1999); *Nippa v Botsford General Hosp (On Remand)*, 257 Mich App 387, 393; 668 NW2d 628 (2003). If a complaint is accompanied by a nonconforming affidavit, dismissal is appropriate. *Kirkaldy v Rim*, 251 Mich App 570, 583-585; 651 NW2d 80 (2002).

Sherwood's affidavit was plainly nonconforming because he was not board certified in obstetrics and gynecology. Plaintiff contends that although Sherwood was not qualified to serve as an expert, her attorney reasonably believed that he was, and the trial court should not have ruled on the issue without holding an evidentiary hearing. Plaintiff never raised this issue below, so the trial court never addressed it. Therefore, it has not been preserved for appeal. *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000). In any event, the evidence presented to the trial court was sufficient to establish that counsel's belief was not reasonable. The evidence showed that defendant was plaintiff's regular obstetrician/gynecologist, that he performed a gynecological procedure, and that he was listed in the local phone book under physicians practicing obstetrics and gynecology. Given such evidence, counsel should have considered that defendant specialized in obstetrics and gynecology; therefore, Sherwood might not be qualified to serve as an expert. Moreover, counsel undertook no independent investigation to determine whether defendant was board certified in his specialty despite the fact that the complaint had to be accompanied by an affidavit of merit from a physician who was board certified in the same specialty.

The fact that Sherwood and another expert opined that counsel reasonably believed that Sherwood was qualified to serve as an expert is of no import. Whether counsel had a reasonable belief that the expert was qualified under § 2169 is not a matter which requires scientific, technical, or other specialized knowledge for determination. See MRE 702. Moreover, "the duty to interpret and apply the law has been allocated to the courts, not to the parties' expert witnesses." *Hottmann v Hottmann*, 226 Mich App 171, 179; 572 NW2d 259 (1997).

Plaintiff contends that even if Sherwood's affidavit were nonconforming, the court should not have dismissed the case because she retained a new expert who was qualified under § 2169(1)(a) and filed an affidavit of merit from him before the limitations period expired, which filing related back to the date of the complaint. Because plaintiff has failed to brief the merits of this claim or to cite any case law or other authority in support, the issue is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

We affirm.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter